Enoch H. Liang (Bar No. 212324)
Enoch.Liang@ltlattorneys.com
Kevin M. Bringuel (Bar No. 196279)
Kevin.Bringuel@ltlattorneys.com
Jennifer S. Jung (Bar No. 302491)
Jenny.Jung@ltlattorneys.com
601 Gateway Blvd, Suite 1010
South San Francisco, CA 94080
Tel: (650) 241-2130
Fax: (650) 241-2142

Attorneys for Plaintiff ERATE.COM, INC.

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

ERATE.COM, INC., Plaintiff, v. FINANCE OF AMERICA MORTGAGE LLC, DBA "eRates Mortgage", an entity with unknown status; GATEWAY FUNDING DIVERSIFIED MORTGAGE SERVICES, L.P., an entity with unknown status; GATEWAY FUNDING, INC., an entity with unknown status; FIRST FINANCIAL SERVICES, INC., an entity with unknown status, BRUNO PASCERI, an individual, KYLE KILPATRICK, an individual, and DOES 1-10, Defendants.	Case No. **COMPLAINT FOR TRADEMARK INFRINGEMENT, FALSE DESIGNATION OF ORIGIN, AND UNFAIR COMPETITION** **DEMAND FOR JURY TRIAL**

Plaintiff ERATE.COM, INC., for its Complaint against Defendants GATEWAY FUNDING DIVERSIFIED MORTGAGE SERVICES, L.P., GATEWAY FUNDING, INC., (the two Gateway defendants are collectively "GATEWAY FUNDING"); FIRST FINANCIAL SERVICES, INC. ("FFSI"), FINANCE OF AMERICA MORTGAGE LLC, DBA "eRates Mortgage" ("FOAM"), BRUNO PASCERI, and KYLE KILPATRICK (collectively "Defendants"), alleges as follows:

I. INTRODUCTION

1. This case arises from Defendants' willful infringement of Plaintiff's incontestable U.S. Trademark Registration No. 4,041,200 for the word mark ERATE®. A true and correct copy of this Registration is attached as **Exhibit A**.

2. Plaintiff has been using the word mark ERATE® to offer mortgage and personal finance related services on its website erate.com since the year 2000. In the last 17 years, Plaintiff has built its erate.com website into California's most popular mortgage broker website, with millions of unique visitors. In fact, since 2005 Plaintiff's Google Adwords advertisements have received over 130 million impressions. These ads viewed by consumers promoted Plaintiff's desktop website, mobile website and various apps. Additionally Plaintiff used Apple's iAd App Network and Yahoo's Flurry Analytics to deliver well over 100 Million more ads of ERATE®.

3. Defendants started doing business at the confusingly similar website eratesmortgage.com in late 2014. Within a few months, customers began actually confusing Plaintiff with Defendants, with Defendants' customers mistakenly sending to Plaintiff their complaints about Defendants' business practices.

4. Public mortgage industry records and reports indicate that Defendant FOAM—which does business as "eRates Mortgage"—was (according to one published list) ranked as the eleventh-largest non-bank mortgage lender by "Top Overall Volume" in the year 2015, originating nearly **$12.3 billion** in home loans, **closing over 45,000 loans in all 50 states**. The same public industry records show that Defendant FOAM is the only mortgage lender on the

entire list with less than 6 years of existence; Defendant FOAM made #11 on the list **in its first full year** of existence. Upon information and belief, Defendant FOAM could not have achieved this success so quickly without hijacking and misappropriating Plaintiff's ERATE® incontestable trademark.

5. In May 2016, Plaintiff sent a cease and desist letter to Defendants. Plaintiff informed Defendants of its trademark for ERATE® and demanded that Defendants stop confusing customers by using the eratesmortgage.com website. Defendants, however, refused to stop doing business at the eratesmortgage.com website and as eRates Mortgage on various third party websites such as Zillow, Bankrate, Costco, and LendingTree.

6. Having no other option, Plaintiff now brings this lawsuit in order to (1) enforce its trademark rights in the mark ERATE®, (2) to protect its hard-earned reputation and business at erate.com from being confused with Defendants' eratesmortgage.com website, (3) to protect its business from being confused with Defendants' infringing business name and Defendants' "dba" eRates Mortgage, and (4) to prevent its phone number 888-88-ERATE (888-883-7283) from being confused with Defendants' 855-MY-ERATE (855-693-7283) phone number.

II. PARTIES

7. Plaintiff ERATE.COM, INC. is a California corporation first incorporated in 2000. Plaintiff has been conducting mortgage and personal finance related services and business activities at the website erate.com since its incorporation.

8. Defendant GATEWAY FUNDING DIVERSIFIED MORTGAGE SERVICES, L.P. is a Pennsylvania limited partnership that maintained its principal place of business in Horsham, Pennsylvania. Defendant GATEWAY FUNDING, INC. is a Pennsylvania corporation that maintained its principal place of business in Horsham, Pennsylvania. Defendant GATEWAY FUNDING, INC. has been and is the sole general partner of Defendant GATEWAY FUNDING DIVERSIFIED MORTGAGE SERVICES, L.P. These two defendants are collectively referred to as "GATEWAY FUNDING."

9. Upon information and belief, Defendant FOAM is the successor-in-interest to Defendant GATEWAY FUNDING. Upon information and belief, Defendant FOAM was either previously known as Defendant GATEWAY FUNDING or purchased Defendant GATEWAY FUNDING. Upon information and belief, today, Defendant FOAM uses Defendant GATEWAY FUNDING's prior address in Horsham, Pennsylvania as one of FOAM's business addresses.

10. Defendant FFSI is based in Charlotte, North Carolina, at 6230 Fairview Road, Suite 425, zip code 28210. Upon information and belief, FFSI is no longer in business and Defendant FOAM is the successor-in-interest to FFSI.

11. Defendant FOAM is headquartered in Charlotte, North Carolina, at 6230 Fairview Road, Suite 425, zip code 28210, and does business as "eRates Mortgage." Upon information and belief, Defendant FOAM has branch offices in the State of California. Upon information and belief, the largest portion of Defendant FOAM's business under the eRates Mortgage business name is conducted in the State of California.

12. Defendant BRUNO PASCERI is the former CEO of Defendant GATEWAY FUNDING and is the current CEO and/or President of Defendant FOAM. Upon information and belief, Defendant PASCERI is based in the Greater Philadelphia Area, but regularly travels to and conducts business in the State of California.

13. Defendant KYLE KILPATRICK is the former Executive Vice President and director of Defendant FFSI, and is currently the President of eRates Mortgage, which upon information and belief, is the same or an affiliated company to Defendant FOAM. Upon information and belief, Defendant KILPATRIK resides in Charlotte, North Carolina, but regularly travels to and conducts business in the State of California.

14. The true names and capacities, whether individual, corporate otherwise of Defendants DOES 1-10 inclusive, are unknown to Plaintiff, who therefore sue them by such fictitious names. Plaintiff will seek leave to amend this complaint to allege their true names and capacities when they have been ascertained. Plaintiff is informed and believe and thereon allege that each of the fictitiously named Defendants is responsible in some manner for the occurrences herein alleged and that those Defendants proximately caused Plaintiff's damages.

At all times herein mentioned, all named Defendants and the DOE Defendants were the agents, servants, employees or attorneys of their co-defendants, and in doing the things hereinafter alleged were acting within the course and scope of their authority as those agents, servants, employees or attorneys, and with the permission and consent of their co-defendants.

III. JURISDICTION AND VENUE

15. The Court has subject matter jurisdiction over Plaintiff's federal question/federal law claims for trademark infringement, false designation of origin, and unfair competition claims under Section 39 of the Lanham Act, 15 U.S.C. § 1121, and under 28 U.S.C. §§ 1331 and 1338(a) & (b).

16. Upon information and belief, the Court has personal jurisdiction over Defendants because they regularly solicit, transact, and do business within California and this district, and the claims in this action arise out of such business.

17. Upon information and belief, Defendants have caused and are causing injury within this district by infringing Plaintiff's incontestable ERATE® trademark registration.

18. Venue is appropriate in this Court pursuant to 28 U.S.C. § 1391 because Defendants are subject to personal jurisdiction in this district and because a substantial part of the events giving rise to Plaintiff's claims occurred in this district.

IV. ALLEGATIONS COMMON TO ALL CLAIMS

A. Plaintiff's Extensive and Exclusive Use of ERATE®

19. Plaintiff launched its mortgage business in 2000 at www.erate.com. Between 2000 and 2006, Plaintiff brokered millions of dollars in mortgages. Plaintiff's business was not limited to the erate.com website; for example, in 2003, Plaintiff had the below large format billboard on the 101 freeway in San Jose.

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LOW
RATES
Refinance FAST!
ERATE.
ERATE.com • 1-888-88-ERATE
ORION

20. Starting in 2006, Plaintiff partnered with others in the mortgage industry to create hundreds and eventually thousands of pages of dynamic mortgage rate content, including publishing the rates and fees of dozens of third party mortgage lenders.

21. Starting in 2009, Plaintiff launched its @ERATE Twitter account, which automatically quoted the lowest mortgage rates reported throughout the day. @ERATE has tweeted over 20,000 times and has over 14,000 followers. Later, Plaintiff also set up separate Twitter accounts for each state in the U.S. (since mortgage rates and fees vary state to state).

22. Also in 2009, Plaintiff created mortgage-related applications for Apple and Android phones and tablets. For example, on May 2, 2011, the ERATE application was the #6 app overall listed in Apple's "Top Free iPhone Finance Apps" ("May 2, 2011 Screenshot"). Another screen shot from iTunes in August, 2011 ("August 2011 Screenshot") shows ERATE application ranked #12 overall. These screen shots are below:

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May 2, 2011 Screenshot of ERATE Application (#6 of Top Free iPhone Finance Apps)

Top Free iPhone Finance Apps
Picture 992(2).png
Date Modified
Size
Kind
Picture 997.png May 2, 2011, 2:31 PM 595 KB PNG Image
Picture 996.png May 2, 2011, 2:31 PM 595 KB PNG Image
Picture 995.png May 2, 2011, 2:12 PM 612 KB PNG Image
Picture 994.png May 2, 2011, 2:11 PM 608 KB PNG Image
Picture 993.png May 2, 2011, 2:10 PM 564 KB PNG Image
Picture 992(2).png May 2, 2011, 10:18 AM 1.3 MB PNG Image

August 2011 Screenshot of ERATE Application (#12 of Top Free iPhone Finance Apps)

iTunes File Edit View Controls Store Advanced Window Help
(26%) Wed 9:06:18 AM
mortgage rates
LIBRARY
Music
Movies
TV Shows
Podcasts
Books
Apps
Ringtones
Radio
STORE
iTunes Store
Ping
Purchased
GENIUS
PLAYLISTS
iTunes DJ
90's Music
Classical Music
Music Videos
My Top Rated
Recently Added
Recently Played
Top 25 Most Played
MyPlaylist20090221
Music Movies TV Shows App Store Books Podcasts iTunes U Ping
lauren@erate.com
Top Free iPhone Finance Apps
Sort By: Bestsellers
1. Barclaycard Finance Updated Jul 29, 2011
2. Bank of America - M... Finance Updated Jul 28, 2011
3. Chase Mobile (SM) Finance Updated Aug 02, 2011
4. Wells Fargo Mobile Finance Updated Jan 04, 2011
5. PayPal Finance Updated Jul 26, 2011
6. Capital One Mobile ... Finance Updated Mar 09, 2011
7. Mint.com Personal ... Finance Updated Jul 21, 2011
8. Pay Anywhere - Accept ... Finance Updated Apr 15, 2011
9. American Express Finance Updated Aug 19, 2011
10. Yahoo! Finance Finance Updated Jun 14, 2011
11. Scottrade Mobile Finance Released Aug 02, 2011
12. Mortgage Rates, Credit ... Finance Updated Jul 15, 2011
13. Bloomberg Finance Updated Aug 21, 2011
14. USAA Mobile Finance Updated Aug 09, 2011
15. Mortgage Calculator... Finance Updated Aug 05, 2011
16. Citi Mobile (sm) Finance Updated Aug 08, 2011
17. Discover Mobile Finance Updated Apr 28, 2011
18. Regions Mobile Finance Released Feb 08, 2011
19. CNBC Real-Time Finance Updated May 05, 2011
20. TD Bank (US) Finance Updated Mar 21, 2011
FREE

23. Since 2006, not including views on Twitter and downloads of mortgage-related apps, the erate.com website alone has logged nearly 6 million users viewing over 26 million page views in nearly 8 million unique sessions. In fact, since 2005 Plaintiff's Google Adwords advertisements have received over 130 million impressions. These ads viewed by consumers promoted Plaintiff's desktop website, mobile website and various apps. Additionally Plaintiff used Apple's iAd App Network and Yahoo's Flurry Analytics to deliver well over 100 Million more ads of ERATE®.

B. Defendants' Negative Reputation in the Mortgage Business

24. Defendant GATEWAY FUNDING has long had an awful reputation in the mortgage industry. For example, in late December 2008, the Federal Trade Commission sued Defendant GATEWAY FUNDING for violating federal law by charging African-American and Hispanic consumers higher prices for mortgage loans when compared to non-Hispanic white consumers. As such, the FTC found that Defendant GATEWAY FUNDING violated the Equal Credit Opportunity Act in pricing both prime and subprime mortgage loans.

25. Ultimately, Defendant GATEWAY FUNDING settled with the FTC for $2.9 million, but was allowed to pay much less due to financial reasons as well as implementation of a fair lending training program and a fair lending monitoring program. Further information can be found at the following website: https://www.ftc.gov/news-events/press-releases/2008/12/mortgage-lender-agrees-settle-ftc-charges-it-charged-african.

26. Unfortunately, Defendant GATEWAY FUNDING failed to live up to the terms of its settlement with the FTC. In January 2010, the FTC entered into a modified settlement with GATEWAY FUNDING, requiring it to hire a third-party consultant to assist it in developing a fair lending compliance and monitoring program.

27. In 2013, the California Department of Oversight announced a settlement with GATEWAY FUNDING, which had been found to be overcharging borrowers for interest before disbursement of their loans. GATEWAY FUNDING had to refund the overcharged interest (plus 10%), and also pay $56,000 in penalties. Further information about this settlement can be found here:

http://www.dbo.ca.gov/Publications/bulletins/volume01/page/monthly_bulletin_volume_01_issue_02.asp and here: http://www.dbo.ca.gov/Press/press_releases/Gateway_Funding.pdf

28. Similarly, Defendant FFSI also has a horrible reputation with consumers in the mortgage industry. As of late 2014, FFSI's website claimed that it was a BBB Accredited Business with an "A+" rating. Upon information and belief, this was a false claim. As of February 2015, the Better Business Bureau of North Carolina showed that Defendant FFSI's rating was a "C-" (on a scale of A to F). Upon information and belief, FFSI later merged or was acquired by GATEWAY and/or FOAM, and part of the reason for this merger/acquisition and later name change to eRates Mortgage was due to FFSI's negative reputation in the mortgage industry.

29. On the real estate website Zillow, there are over 100 negative reviews for "erates mortgage." On the consumer-ratings website Yelp, over 80% of the reviews for "erates mortgage" are negative. ERATE® has never had a negative review.

30. Given the negative reputations of these three Defendant companies, Plaintiff understandably does not wish to be associated with the corporate Defendants in any way whatsoever.

C. Defendants' Infringing Use of the ERATE® Mark

31. In or about October 2011, Defendant GATEWAY FUNDING registered the eratesmorgage.com website. However, upon information and belief, there was no content on this website for nearly three years.

32. Upon information and belief, some time prior to August 2014, Defendant GATEWAY FUNDING purchased Defendant FFSI's call center and website because Defendant FFSI was getting ready to go out of business due to its horrible reputation among consumers. After purchasing the FFSI call center and website, Defendant GATEWAY FUNDING then re-named the call center "ERATES MORTGAGE".

33. In or about August 2014, Defendant FFSI had a mortgage-related website at www.ffsmortgage.com. Upon information and belief, Defendant GATEWAY FUNDING decided to take the content from the FFSI website (at www.ffsmortgage.com), modify it just a

bit, and then repost that content on the eratesmortgage.com website. **Exhibit B** is a side-by-side screenshot showing the similarities between the FFSI website and the GATEWAY FUNDING website at eratesmortgage.com.

34. Within a few months of the August 2014 launch of the eratesmortgage.com, Plaintiff began receiving misdirected inquiries from confused customers, by email, by letter, by telephone, and also through searches for "erates" instead of "erate." For example, on January 5, 2015, a lawyer named Joel Uher sent a demand letter to Plaintiff about an unsatisfactory appraisal done on a property in Sacramento, CA by Central Valley Appraisal Group. This letter was addressed to Christopher C. Manzella, who upon information and belief, was a loan officer at eRates Mortgage. Since then, Plaintiff has received well over 20 instances of mis-directed phone calls, letters, and/or emails from Defendants' disgruntled customers.

35. Defendants have continuously used the eratesmortgage.com website to engage in the mortgage business since late August 2014. Public industry records show that Defendant FOAM was the 11th largest mortgage lender by "Top Overall Volume" in the year 2015, originating nearly **$12.3 billion** in home loans, **closing over 45,000 loans in all 50 states**. The same public industry records show that Defendant FOAM is the only mortgage lender on the entire list with less than 6 years of existence; Defendant FOAM made #11 on the list **in its first full year** of existence. Upon information and belief, Defendant FOAM could not have achieved this rapid success without stealing Plaintiff's ERATE® incontestable trademark.

36. Upon information and belief, in April 2015, the Blackstone Group bought Defendant GATEWAY FUNDING, changing the name from GATEWAY FUNDING to Defendant FOAM.

D. Defendants' Willful Disregard of Plaintiff's Intellectual Property

37. Upon information and belief, Defendants were always aware of Plaintiff's ERATE® website and registered trademark both before and at the time their infringement began.

38. **Defendants KILPATRICK and FFSI were aware of Plaintiff's erate.com website and its ERATE® mark**. From 1997 to 2005, Defendant KILPATRICK took an

executive position at Ditech, whose mortgage rates were prominently displayed on Plaintiff's ERATE® homepage. From 2005 to 2008, Defendant KILPATRICK took another executive position at LendingTree, with which Plaintiff worked closely in providing certain leads. As a high-level executive at both Ditech and LendingTree, Defendant KILPATRICK was fully aware of Plaintiff's website and trademarks upon joining FFSI as its Executive Vice President and director of FFSI in April 2011.

39. With Defendant KILPATRICK on its leadership team, Defendant FFSI and Plaintiff had a business relationship for over two years between July 2011 and the Fall of 2013, during which FFSI spent over $25,000 advertising on Plaintiff's website. Defendant FFSI was indisputably aware of Plaintiff's website before beginning the operation of eratesmortgage.com in 2014. **Exhibit C** is a screenshot of FFSI's advertisements on Plaintiff's website from November 2012. Defendant KILPATRICK continued to serve as both Executive Vice President and director of FFSI until May 2014.

40. **Likewise, Defendants GATEWAY FUNDING and PASCERI was well aware of Plaintiff's website and trademark**. Upon information and belief, in January 2013, March 2014, August 2014, and again in October 2014, someone from the IP address for Defendant GATEWAY FUNDING in Horsham, Pennsylvania visited Plaintiff's erate.com website. This is further evidence that Defendants knew about Plaintiff's website and registered trademark, but decided to move ahead anyway with their eratesmortgage.com website. Further, Defendant PASCERI—current CEO and President of FOAM—would also have been aware of Plaintiff's website and ERATE® mark, having served as President and/or CEO of GATEWAY FUNDING at all relevant times before GATEWAY FUNDING became FOAM.

41. **Defendants KILPATRICK, PASCERI, and FOAM were aware of Plaintiff's website and trademark, and willfully disregarded Plaintiff's rights**. As noted above, Defendant KILPATRICK—current President of eRates Mortgage—was unquestionably aware of Plaintiff's website and trademark through his tenure as Executive Vice President and Director of FFSI from 2011 to 2014. Moreover, Defendant PASCERI was also unquestionably aware of

Plaintiff's website and trademark through his tenure as President and/or CEO of GATEWAY FUNDING at all relevant time periods..

42. Upon information and belief, Defendants KILPATRICK and PASCERI are responsible for eRates Mortgage's and/or FOAM's advertising and marketing, manage both the company's website and internet accounts, and run the company's day-to-day operations. Notwithstanding their knowledge of Plaintiff's protected intellectual property, Defendants KILPATRICK and PASCERI directed eRates Mortgage/FOAM to misappropriate Plaintiff's goodwill and reputation in the mortgage industry by infringing on Plaintiff's ERATE® mark.

43. In May 2016, having learned of Defendants' adoption and use of the ERATE® mark because of incidents of actual confusion, Plaintiff sent Defendant FOAM a cease and desist letter—specifically addressed to Defendant PASCERI—asking that FOAM immediately and voluntarily discontinue their infringing use of the ERATE® mark. A true and correct copy of Plaintiff's cease and desist letter is attached as **Exhibit D**.

44. Under Defendants PASCERI's and KILPTRICK's direction, Defendant FOAM d/b/a eRates Mortgage refused to cease its infringement of Plaintiff's trademark, instead threatening to sue Plaintiff for defamation and other business torts.

45. Since May 2016, Defendant FOAM has continued to use the ERATE® mark in conducting its business, including at the eratesmortgage.com website, as well as on various third party websites such as Zillow, Bank Rate, and LendingTree. Upon information and belief, Defendants KILPATRICK and PASCERI are responsible for FOAM's infringing use of ERATE® mark, and willfully and intentionally directed and continues to direct FOAM to infringe on Plaintiff's ERATE® mark so that the company can benefit from Plaintiff's business and goodwill.

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V. CAUSES OF ACTION AND PRAYER FOR RELIEF

FIRST CAUSE OF ACTION

(Trademark Infringement)

46. Plaintiff re-alleges the foregoing paragraphs and incorporates them as if fully set forth herein.

47. Defendants' eratesmortgage.com website and business name "eRates Mortgage", as described above, is confusingly similar to Plaintiff's ERATE® trademark and infringes that trademark.

48. Defendants' unauthorized use of ERATE® in the dominant portion of the eratesmortgage.com website, in their toll-free phone number, on third party websites (like Zillow), and as their "DBA eRates Mortgage" has and is likely to continue to cause confusion and mistake and to deceive the public as to the approval, sponsorship, license, or origin of Defendants' services. It will cause consumers to believe falsely that Defendants' services are licensed, sponsored, endorsed by, transported by, or otherwise affiliated with Plaintiff. In the alternative, it will cause consumers to believe falsely that Plaintiff's services are licensed, sponsored, endorsed by, transported by, or otherwise affiliated with Defendants.

49. Defendants' unlawful actions have been conducted in commerce and have affected, and will continue to affect, Plaintiff's business of promoting and offering mortgage services under Plaintiff's ERATE® trademark, and therefore constitute trademark infringement in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.

50. Defendants' unlawful actions also constitute trademark infringement in violation of Cal. Bus. & Prof. Code § 14245 and the common law.

51. Upon information and belief, Defendants' acts of trademark infringement have been done willfully and deliberately, by copying and using Plaintiff's erate.com website and copying and using Plaintiff's ERATE® trademark registration, particularly since Defendants have had actual knowledge of Plaintiff's ERATE® trademark for years and have still refused to discontinue its use.

52. Defendants' unlawful actions described above have caused injury and damages to Plaintiff, and have caused irreparable injury to Plaintiff's goodwill and reputation, and will continue to do so unless enjoined by the Court.

53. Plaintiff has been damaged as a result of the Defendants' infringement of its trademark. Defendants' use of the Infringing Mark has greatly injured Plaintiff's general reputation causing Plaintiff damage in an amount not yet ascertainable, but will be determined at trial.

54. Upon information and belief, Defendants have derived and received, from the aforesaid acts of infringement, gains, profits, and advantages in an amount not yet ascertainable, but will be determined at trial.

55. Upon information and belief, the intentional nature of Defendants' actions make this an exceptional case under 15 U.S.C. § 1117(a).

56. Upon information and belief, Defendants' willful and deliberate actions were committed in bad faith and with the intent to cause confusion and mistake, and to deceive the consuming public as to source, sponsorship, and/or affiliation. As the acts alleged herein constitute a willful violation of 15 U.S.C. § 1114 and Cal. Bus. & Prof. Code § 14245, Plaintiff is entitled to injunctive relief as well as monetary damages and other remedies provided by 15 U.S.C. §§ 1114, 1116, 1117, and 1118, Cal. Bus. & Prof. Code §§ 14245 and 14250, and the common law, including but not limited to Defendants' profits, treble damages, reasonable attorneys' fees, costs and prejudgment interest.

SECOND CAUSE OF ACTION

(False Designation of Origin)

57. Plaintiff re-alleges the foregoing paragraphs and incorporates them as if fully set forth herein.

58. Defendants' actions as described herein constitute direct and/or contributory violation of 15 U.S.C. §1125(a)(1)(A), as such actions are likely to cause confusion or mistake, or to deceive as to regarding the origin, sponsorship, and/or approval of Defendants' services by Plaintiff, or vice versa. These acts amount to false designation of origin.

59. Plaintiff has been damaged as a result of the Defendants' false designation of origin. Defendants' unauthorized use of ERATE® in the dominant portion of the eratesmortgage.com website, in their toll-free phone number, on third party websites (like Zillow), and as their "DBA eRates Mortgage", as described above, has greatly injured Plaintiff's general reputation causing Plaintiff damage in an amount not yet ascertainable, but will be determined at trial.

60. Upon information and belief, Defendants have derived and received from the aforesaid acts of infringement, gains, profits, and advantages in an amount not yet ascertainable, but will be determined at trial.

61. Upon information and belief, Defendants acted intentionally and/or willfully, knowing that Plaintiff had long had the erate.com website and had long had a registered trademark for ERATE®, and knowing that Defendants did not have authorization to use said mark.

62. Defendants' unlawful actions described above have caused injury and damages to Plaintiff, and have caused irreparable injury to Plaintiff's goodwill and reputation, and will continue to do so unless enjoined by the Court.

63. Upon information and belief, Defendants' willful and deliberate actions were committed in bad faith and with the intent to cause confusion and mistake, and to deceive the consuming public as to the source, sponsorship, and/or affiliation. As the acts alleged herein constitute a willful violation of 15 U.S.C. § 1125(c), Plaintiff is entitled to injunctive relief as well as monetary damages and other remedies provided by 15 U.S.C. §§ 1114, 1116, 1117, and 1118, and common law, including but not limited to Defendants' profits, treble damages, reasonable attorneys' fees, costs and prejudgment interest.

THIRD CAUSE OF ACTION

(Unfair Competition under Cal. Bus. & Prof. Code § 17200)

64. Plaintiff re-alleges the foregoing paragraphs and incorporates them as if fully set forth herein.

65. Defendants' unlawful actions described herein constitute unlawful, unfair, and/or fraudulent business acts or practices. Defendants' actions thus constitute "unfair competition" pursuant to Cal. Bus. & Prof. Code § 17200, *et seq*. Defendants' action also constitute unfair competition under the common law.

66. Plaintiff has suffered an injury in fact, including without limitation, damages in an amount to be proven at trial, loss of money, and diminution in the value of the ERATE® trademark and goodwill, as a proximate result of Defendants' unfair competition.

67. Plaintiff requests disgorgement of all profits which Defendants wrongfully obtained by their unfair competition, and restitution to Plaintiff in an amount to be proven at trial.

68. Defendants' actions have caused, and will continue to cause Plaintiff to suffer irreparable harm unless enjoined by this Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows as to each Defendant with respect to each claim for relief:

1. For a judgment that Defendants, their officers, agents, distributors, employees, attorneys, subsidiaries, assigns or related companies, and those in active concert or participation with any of them, be permanently enjoined from using or employing, directly or indirectly, the ERATE® trademark, or any trademark, logo, or device that is confusingly similar to the ERATE® trademark, or is likely to confuse or deceive as to the affiliation, connection, sponsorship, or association of Defendants' commercial activities with Plaintiff or the ERATE® mark;

2. That Defendants be directed to file with this Court, within *thirty* days after entry of any injunction in this case, a written statement, under oath, setting forth in detail the manner in which Defendants have complied with the injunction;

3. That an accounting be directed to determine Defendants' profits resulting from their trademark infringement, false designation of origin, and unfair competition which are the subject

of this suit, that Defendants' profits be disgorged to Plaintiff, and that such amounts be multiplied pursuant to 15 U.S.C. § 1117;

4. That Plaintiff recover damages, in an amount to be determined at trial, resulting from Defendants' trademark infringement, false designation of origin, and unfair competition;

5. That such damages be trebled as a result of Defendants' willful, deliberate, intentional and/or in bad faith actions to the extent allowable by law;

6. That Plaintiff recover its costs of this action;

7. That Plaintiff be awarded its reasonable attorneys' fees in accordance with 15 U.S.C. § 1117(a), 17 U.S.C. § 1203 and Cal. Bus. & Prof. Code § 14250, and any and all other applicable statutes, rules, and common law;

8. That Plaintiff be awarded punitive and/or treble damages in an amount to be determined; and

9. That Plaintiff recover all such other and further relief as the Court may deem just and appropriate.

Dated: May 4, 2017

Respectfully submitted,

LTL ATTORNEYS LLP

By: */s/ Enoch H. Liang*
Enoch H. Liang
Kevin M. Bringuel
Jennifer S. Jung

Attorneys for Plaintiff ERATE.COM, INC.

DEMAND FOR JURY TRIAL

Plaintiff requests a trial by jury on all issues so triable as of right.

Dated: May 4, 2017

Respectfully submitted,

LTL ATTORNEYS LLP

By: */s/ Enoch H. Liang*
Enoch H. Liang
Kevin M. Bringuel
Jennifer S. Jung

Attorneys for Plaintiff ERATE.COM, INC.

EXHIBIT A

United States of America

United States Patent and Trademark Office

ERATE

Reg. No. 4,041,200

Registered Oct. 18, 2011

Int. Cl.: 36

SERVICE MARK

PRINCIPAL REGISTER

ERATE.COM (CALIFORNIA CORPORATION), DBA ERATE
SUITE 100
2900 GORDON AV
SANTA CLARA, CA 95051

FOR: PROVIDING A WEB SITE FEATURING PERSONAL FINANCIAL INFORMATION AND FINANCIAL ADVICE, IN CLASS 36 (U.S. CLS. 100, 101 AND 102).

FIRST USE 6-30-2000; IN COMMERCE 6-30-2000.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 85-254,112, FILED 3-1-2011.

GIANCARLO CASTRO, EXAMINING ATTORNEY

Director of the United States Patent and Trademark Office

EXHIBIT B

FFSI's website at www.ffsmortgage.com

GATEWAY FUNDING website at eratesmortgage.com

http://www.ffsmortgage.com/
159 captures
JUL AUG DEC
25
2013 2014 2015
FFSi First Financial Services, Inc.
ACCREDITED BUSINESS A+
866-506-9090
Home
Refinance
Purchase
Loan Programs
Resources
About Us
Our Blog
Apply Online
Welcome to First Financial Services
First Financial Services is one of the fastest-growing, direct-to-consumer mortgage lenders in the country. Over the past 20 years we have helped thousands of consumers with their home loans and financing needs by focusing on Customer Satisfaction, Superior Rates, and a Streamlined Process.
See what our customers are saying!
Redwood City, CA
While searching the internet I was first drawn to FFS by the long history of positive customer reviews. Their advertised rates were very good so I dec...
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Housing inventory remains at low levels across the United States. With the average home selling in under 30 days demand is driving up once dismal housing prices.
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Refinance / Buy a home

1. Loan Details

Value of Home: 226,000

Current Mortgage Balance: 180,000

2nd Mortgage Loan (if any): 0

Cashout Amount (if any): 0

LTV: 80%

Include FHA Loans

2. Home Details

State: California

City / Zip

Home Type: Single Family/Townh

Occupancy Type: Primary Residence

Loan Type: 30-Year Fixed (Help me decide)

Points: Up to 1.5 points (Help me decide)

3. About me

Credit Rating: Excellent (740-850)

Include VA Loans

update

Compare mortgage rates in CA on 11/02/2012

Compare Checked (Select up to 3 offers) 1-15 of 15 sponsored results

Lender	Rate	APR	Payment	Points & Fees	Contact details
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QuickenLoans NMLS#3030	3.500%	3.792%	$808	$5,070 Lender Fees lender and loan info	FREE QUOTE
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QuickenLoans NMLS#3030	3.500%	3.792%	$808	$5,070 Lender Fees lender and loan info	FREE QUOTE
AimLoan.com NMLS #2890	3.000%	3.109%	$758	$3,577 Lender Fees lender and loan info	FREE QUOTE
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First Financial Services (FFSi) advertised on ERATE® from July 2011 through September/October 2013

Evidence they knew ERATE® existed and was involved in mortgages.

The total spent to appear on ERATE® was $25,771.7 they got 3,445 clicks and 89 short form data leads

Actual rates and other information may vary. Sponsored results shown only include participating lenders. The information you enter on this page will only be shared with lenders you choose to contact, either by calling the phone number or

EXHIBIT D

ERATE
4701 Patrick Henry Drive
Building 16, Suite 100
Santa Clara, CA 95054-1863

May 6, 2016
Via Overnight Courier

Finance of America Mortgage LLC
6230 Fairview Road, Suite 425
Charlotte, NC 28210

Dear Bruno Pasceri, President/CEO:

I am writing on behalf of ERATE.com, Inc., located in Santa Clara, CA. Publisher of financial rates.

ERATE.com, Inc owns the federal trademark registration for ERATE. The federal registration 4,041,200 was issued October 18, 2011 for use in Class 36.
The purpose of this letter is to place you on notice regarding your company's unauthorized and infringing use of the trademark eRates. I am informed of the following:

Your company has been offering mortgage services under the name eRates Mortgage.

Demand is hereby made that you cease any continuing or future uses of your trademark, eRates. Absent a prompt resolution, I will recommend that my lawyer take appropriate legal action to protect my proprietary rights. Any further infringing activity occurring after the receipt of this letter shall be considered willful infringement.

My company vigorously protects its trademarks. As your attorney can advise you, infringement of trademark exposes you to extensive liability. Be advised that 15 U.S.C. §1117(a) provides that my company may recover all profits derived from your infringing activity as well as full court costs and reasonable attorney fees. If necessary, my company is prepared to seek temporary restraining orders, injunctions, and other appropriate relief in addition to compensation for damages. Your attorney can undoubtedly advise you as to the relevant details. If I do not hear from you within seven days of the date of this letter, I will be compelled to take appropriate legal action to protect my company's trademarks and to receive just compensation for any damage suffered. I look forward to hearing from you or your attorney.

Sincerely,

W. Jeff Howard, CEO
408-366-2000
jeff@erate.com